

REMARKS

This Request for Reconsideration is filed in response to the Final Office Action of September 29, 2005, in which claims 1-62 were finally rejected. In response to the Applicant's arguments filed July 14, 2005, the Examiner maintains that the "get presence primitive" of the data structure claimed in claim 1 may include subscription information because the specification at page 27, lines 7-11 states that presence means all kinds of status information.

However, the cited explanation of the presence concept is only relevant with respect to the list of presence values which is requested in the claimed "get presence primitive." In other words, the list of presence values requested includes presence values with "all kinds of status information" in the sense pointed out by the Examiner but they must be included within the get presence primitive itself which is the considerably narrower structure claimed.

The overbreadth of the Examiner's interpretation is also made plain by the second part of claim 1 which is the part that is directed to the presence primitive provided from the server to the requesting user client in response to the get presence primitive, i.e., the "presence information."

The first part of claim 1 is clearly directed to that part of the data structure that is exemplified by the operation illustrated in Fig. 3A at reference numeral 32 and not to the status (in the sense used by the Examiner) information *per se*. The second part of the data structure claimed in claim 1 deals with a list of such status information values supplied.

In other words, the presence primitive described in the second part of the data structure claimed in claim 1 includes the presence information with various information elements including the requested user identifier and a list of presence

values supplied. It is these presence values that the part of the specification referred to by the Examiner pertains to, i.e., “all kinds of status information” of a particular mobile or fixed network user. Such information is provided in the operation illustrated for instance at reference number 33 in Fig. 3A, or in the operation referred to by reference numeral 35. Notice the use of the capital letter “P” with respect to some of the signals shown in Fig. 3A. As explained on page 27, line 20, the capital letter P stands for an exchange of presence values. The subscribed presence model is described beginning at page 31, line 20, and is claimed in claim 4, which depends from claim 1.

The meaning of these two different approaches will now be summarized. In comparing the situations shown in Figs. 3A and 4A on sheet 5/28, notice that the “get presence” primitive on the line 32 requires the presence server 27 to request presence authorization by sending a signal on the line 36 to another IM client. Only after an authorization signal is received on the line 37 is the presence sent on the line 33 from the presence server 27 to the IM client that originated the “get presence” request on the line 32. Thus, the “get presence” primitive means that the IM client on the left hand side of Fig. 3A is not already subscribed to the presence information of the IM client on the right hand side and the presence server 27 has to then, right then and there, go get authorization before sending the presence to the requesting IM client. While the claim does not set forth these limitations in detail, it is nonetheless the only interpretation possible in view of the specification and the nature of claim 4 which is covering the above described subject matter shown in Fig. 4A.

In Fig. 4A the “subscribed presence” model (see page 31, beginning at line 20) is shown as *an additional* part of the claimed data structure. This additional feature is claimed in dependent claim 4. In that scenario, a subscribed presence signal on a line 80 is sent to the presence server where the presence server recognizes the subscribed presence primitive as requesting a subscription to presence information, in the sense used by the Examiner. The presence server again requests authorization but on an ongoing basis so that once the presence server receives the authorization, it will send the presence information not only

immediately as on the line 88 but also after updates such as the updates shown on the line 86 followed by sending the updated information on the line 90 without any need for a separate request from the IM client on the left.

Under the principles of claim differentiation, it cannot be that claim 4 claims the subscribed presence scenario of Fig. 4A redundantly to the interpretation given by the Examiner that the “get presence primitive” of claim 1 covers requesting a subscription. Under those principles the subject matter of claim 1 should rather be given its broadest reasonable interpretation consistent with the specification, i.e., as covering the “unsubscribed presence” model described from page 27, line 14 to page 31, line 18, with the further limitation of claim 4 covering the “subscribed presence” model. The doctrine of claim differentiation states that claim terms should not be read to contain a limitation “where another claim restricts the invention in exactly the [same] manner,” see Turbo Care Div. of Demag Delaval Turbomachinery Corp. v. Gen. Elec. Co., 264 F.3d 1111, 1123 (Fed. Cir. 2001).

If an infringer were to employ the data structure of claim 1 using the unsubscribed presence model described beginning at page 27, line 14, i.e., by using the get presence primitive of claim 1, the infringer would indeed infringe claim 1. Claim 4 would be read as containing all of the recitals of claim 1 pertaining to the unsubscribed presence model, but be limited further to a feature including the subscribed presence model as well. As a result, one using the “unsubscribed presence” model would not necessarily also infringe claim 4.

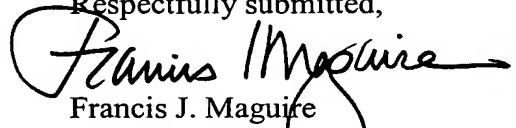
Now suppose somebody used the “subscribed presence” model set forth in claim 4 by using a “subscribe presence” primitive *without also using the “get presence” primitive* of claim 1 and the Applicant hereof argued in an infringement suit that claim 1 must be interpreted as including a subscription request such as argued by the Examiner. In that case, Applicant’s attempt to read claim 1 as including a feature of a subscription request would be a rewriting of the claim to incorporate disclosure from the specification in an impermissible manner. This is due to the fact that the specification defines the subscribed presence model as

distinct from the unsubscribed model and there is nothing in the specification to suggest that the applicant used the term “get presence primitive” to denote merely getting “all kinds of status information” without also using the unsubscribed presence model. Applying the doctrine of claim differentiation, one looking at claims 1 and 4 would have to conclude that the express reference to the “subscribe presence” primitive in claim 4 makes it clear that the “get presence” primitive of claim 1 gives claim 1 a scope that *excludes* a data structure with a “subscribe presence” primitive *and not a “get presence” primitive*. More significantly, claim 4 would be rendered meaningless with its recital of the data structure including a “subscribe presence” primitive if claim 1 were also interpreted as embracing a “subscribe presence” primitive. In effect, claim 4 would be redundant. The rule of construction regarding claim differentiation, therefore, would result in the conclusion that the claims must mean different things and pertain to different aspects of the invention with claim 4 adding the “subscribe presence” primitive to the data structure of claim 1 which includes from the outset the “get presence” primitive and not the “subscribe presence” primitive. A data structure according to claim 4 covers both models but a data structure according to claim 1 only covers one model, i.e., the “unsubscribed presence” model. Consequently, the infringement suit would fail.

For these reasons, it is again urged by the applicant that the claimed “get presence” primitive does not embrace a subscription request, and that such a subscription request is only covered by claim 4. The broad interpretation given by the Examiner to claim 1 is not reasonable (as required by MPEP §2111) in light of the specification and claim 4.

Reconsideration is requested and withdrawal of the rejection of claims 1-62 is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Francis J. Maguire", written over the printed name.

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